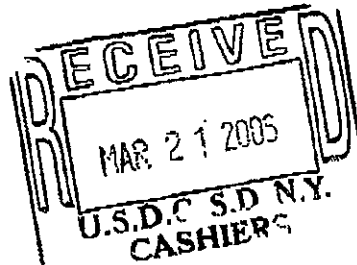


JUDGE JONES

08 CV 02953

Steven Mitnick, Esq.  
Mitnick & Malzberg, P.C.  
PO Box 429  
29 Race Street  
Frenchtown, New Jersey 08825  
(908) 996-3716  
Counsel for Plaintiff

Melissa A. Pena, Esq.  
Norris, McLaughlin & Marcus  
875 Third Avenue, 18th Floor  
New York, New York 10022  
(212) 808-0700  
Local Counsel for Plaintiff



SYSKO FOOD SERVICES OF METRO  
NEW YORK, LLC

Plaintiff,

**v.**

JEKYLL & HYDE, INC.; DEACON BRODY  
MANAGEMENT INC. d/b/a JEKYLL  
&HYDE GREENWICH VILLAGE and DONALD  
R. FINLEY; BAYVILLE  
ENTERTAINMENT INC. d/b/a BAYVILLE  
ADVENTURE PARK; SIXTH AVENUE FOOD  
SERVICES LTD.; NEW CASTLE FOODS  
INC.; DAVEY JONES LOCKER  
MANAGEMENT, INC. d/b/a SHIP WRECK  
TAVERN; and 186 WEST 4TH ST.  
MANAGEMENT CO. INC.  
d/b/a OLIVERS BAR & GRILL,

Defendants

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF  
NEW YORK

Civil Case No. 08-CV-02958(BSJ)

ECF Case

## COMPLAINT

Plaintiff, Sysco Food Services of Metro New York, LLC,  
through its attorneys Mitnick & Malzberg, P.C. and Norris,

McLaughlin & Marcus, PA, as for its Complaint against Defendants alleges as follows:

STATEMENT OF JURISDICTION

1. Sysco Food Services of Metro New York, LLC is a company incorporated in the State of Delaware with offices located at 20 Theodore Conrad Drive, Jersey City, New Jersey 07305

2. Defendants, Jekyll & Hyde, Inc., Deacon Brody Management Inc. d/b/a Jekyll & Hyde Greenwich Village, Bayville Entertainment Inc. d/b/a Bayville Adventure Park, Sixth Avenue Food Services Ltd., New Castle Foods Inc., Davey Jones Locker Management Inc. d/b/a Ship Wreck Tavern, 186 West 4th St. Management Co., Inc. d/b/a Olivers Bar & Grill, upon information and belief, are New York corporations with offices located at 1409 Avenue of the Americas, New York, NY 10019, among others.

3. Defendant Donald R. Finley, upon information and belief, is a resident of the State of New York.

4. Jurisdiction of this Court is based upon diversity of citizenship, pursuant to 28 U.S.C. 1322, et seq., and the amount in controversy exceeds the allowed amount.

FIRST COUNT

1. There is due from the defendant Jekyll & Hyde, Inc., (Jekyll), to the plaintiff the sum of \$203,042.16 on a certain book account, a true copy of which is annexed hereto as Exhibit "A." Payment has been demanded and has not been made.

2. The plaintiff sues the defendant Jekyll for goods sold and delivered and/or services rendered by the plaintiff to the defendant, upon the promise by Jekyll to pay the agreed amount as set forth in Exhibit "A" annexed hereto. Payment has been demanded and has not been made.

3. The plaintiff sues the defendant Jekyll for the reasonable value of goods sold and delivered, and/or services rendered by the plaintiff to the defendant Jekyll upon the promise of Jekyll to pay a reasonable price for the same, as set forth in Exhibit "A" annexed hereto. Payment has been demanded and has not been made.

4. The defendant, Jekyll, being indebted to the plaintiff in the sum of \$203,042.16 upon an account stated between them, did promise to pay to the plaintiff said sum upon demand. Payment has been demanded and has not been made.

WHEREFORE, plaintiff demands judgment against the defendant Jekyll in the sum of \$203,042.16, plus attorney fees pursuant to the credit application or as permitted by law, plus interest and

costs.

SECOND COUNT

1. Plaintiff repeats the allegations contained in the First Count of its Complaint as if set forth at length herein.

2. There is due from the defendant Deacon Brody Management Inc. d/b/a Jekyll & Hyde Greenwich Village, (Brody), to the plaintiff the sum of \$5643.00 on a certain book account, a true copy of which is annexed hereto as Exhibit "B." Payment has been demanded and has not been made.

3. The plaintiff sues the defendant Brody for goods sold and delivered and/or services rendered by the plaintiff to the defendant Brody, upon the promise by Brody to pay the agreed amount as set forth in Exhibit "B" annexed hereto. Payment has been demanded and has not been made.

4. The plaintiff sues the defendant Brody for the reasonable value of goods sold and delivered, and/or services rendered by the plaintiff to the defendant Brody upon the promise of Brody to pay a reasonable price for the same, as set forth in Exhibit "B" annexed hereto. Payment has been demanded and has not been made.

5. The defendant, Brody, being indebted to the plaintiff in the sum of \$5643.00 upon an account stated between them, did promise to pay to the plaintiff said sum upon demand. Payment

has been demanded and has not been made.

6. Pursuant to a Personal Guaranty executed by defendant Donald R. Finley, and annexed hereto as Exhibit "H" defendant Finley is personally responsible for the indebtedness of Brody.

WHEREFORE, plaintiff demands judgment against the defendant Brody and Finely in the sum of \$5643.00, plus attorney fees pursuant to the credit application or as permitted by law, plus interest and costs.

### THIRD COUNT

1. Plaintiff repeats the allegations contained in the First and Second Counts of its Complaint as if set forth at length herein.

2. There is due from the defendant Bayville Entertainment Inc. d/b/a Bayville Adventure Park, (Bayville), to the plaintiff the sum of \$1370.93 on a certain book account, a true copy of which is annexed hereto as Exhibit "C." Payment has been demanded and has not been made.

3. The plaintiff sues the defendant Bayville for goods sold and delivered and/or services rendered by the plaintiff to the defendant Bayville, upon the promise by Bayville to pay the agreed amount as set forth in Exhibit "C" annexed hereto. Payment has been demanded and has not been made.

4. The plaintiff sues the defendant Bayville for the

reasonable value of goods sold and delivered, and/or services rendered by the plaintiff to the defendant Bayville upon the promise of Bayville to pay a reasonable price for the same, as set forth in Exhibit "C" annexed hereto. Payment has been demanded and has not been made.

5. The defendant, Bayville, being indebted to the plaintiff in the sum of \$1370.93 upon an account stated between them, did promise to pay to the plaintiff said sum upon demand. Payment has been demanded and has not been made.

WHEREFORE, plaintiff demands judgment against the defendant Bayville in the sum of \$1370.93, plus attorney fees pursuant to the credit application or as permitted by law, plus interest and costs.

#### FOURTH COUNT

1. Plaintiff repeats the allegations contained in the First through Third Counts of its Complaint as if set forth at length herein.

2. There is due from the defendant Sixth Avenue Food Services Ltd. (Sixth), to the plaintiff the sum of \$452,078.76 on a certain book account, a true copy of which is annexed hereto as Exhibit "D." Payment has been demanded and has not been made.

3. The plaintiff sues the defendant Sixth for goods sold

and delivered and/or services rendered by the plaintiff to the defendant, upon the promise by Sixth to pay the agreed amount as set forth in Exhibit "D" annexed hereto. Payment has been demanded and has not been made.

4. The plaintiff sues the defendant Sixth for the reasonable value of goods sold and delivered, and/or services rendered by the plaintiff to the defendant Sixth upon the promise of Sixth to pay a reasonable price for the same, as set forth in Exhibit "D" annexed hereto. Payment has been demanded and has not been made.

5. The defendant, Sixth, being indebted to the plaintiff in the sum of \$452,078.76 upon an account stated between them, did promise to pay to the plaintiff said sum upon demand. Payment has been demanded and has not been made.

WHEREFORE, plaintiff demands judgment against the defendant Sixth in the sum of \$452,078.76 plus attorney fees pursuant to the credit application or as permitted by law, plus interest and costs.

#### FIFTH COUNT

1. Plaintiff repeats the allegations contained in the First through Fourth Counts of its Complaint as if set forth at length herein.

2. There is due from the defendant, New Castle Foods Inc.

(Castle), to the plaintiff the sum of \$50,189.60 on a certain book account, a true copy of which is annexed hereto as Exhibit "E." Payment has been demanded and has not been made.

3. The plaintiff sues the defendant Castle for goods sold and delivered and/or services rendered by the plaintiff to the defendant Castle, upon the promise by Castle to pay the agreed amount as set forth in Exhibit "E" annexed hereto. Payment has been demanded and has not been made.

4. The plaintiff sues the defendant Castle for the reasonable value of goods sold and delivered, and/or services rendered by the plaintiff to the defendant Castle upon the promise of Castle to pay a reasonable price for the same, as set forth in Exhibit "E" annexed hereto. Payment has been demanded and has not been made.

5. The defendant, Castle, being indebted to the plaintiff in the sum of \$50,189.60 upon an account stated between them, did promise to pay to the plaintiff said sum upon demand. Payment has been demanded and has not been made.

WHEREFORE, plaintiff demands judgment against the defendant Castle in the sum of \$50,189.60 plus attorney fees pursuant to the credit application or as permitted by law, plus interest and costs.



SIXTH COUNT

1. Plaintiff repeats the allegations contained in the First through Fifth Counts of its Complaint as if set forth at length herein.

2. There is due from the defendant, Davey Jones Locker Management Inc. d/b/a Ship Wreck Tavern, (Davey), to the plaintiff the sum of \$26,632.37 on a certain book account, a true copy of which is annexed hereto as Exhibit "F." Payment has been demanded and has not been made.

3. The plaintiff sues the defendant Davey for goods sold and delivered and/or services rendered by the plaintiff to the defendant Davey, upon the promise by Davey to pay the agreed amount as set forth in Exhibit "F" annexed hereto. Payment has been demanded and has not been made.

4. The plaintiff sues the defendant Davey for the reasonable value of goods sold and delivered, and/or services rendered by the plaintiff to the defendant Davey upon the promise of Davey to pay a reasonable price for the same, as set forth in Exhibit "F" annexed hereto. Payment has been demanded and has not been made.

5. The defendant, Davey, being indebted to the plaintiff in the sum of \$26,632.37 upon an account stated between them, did promise to pay to the plaintiff said sum upon demand.

Payment has been demanded and has not been made.

WHEREFORE, plaintiff demands judgment against the defendant Davey in the sum of \$26,632.37 plus attorney fees pursuant to the credit application or as permitted by law, plus interest and costs.

SEVENTH COUNT

1. Plaintiff repeats the allegations contained in the First through Sixth Counts of its Complaint as if set forth at length herein.

2. There is due from the defendant, 186 West 4th St. Management Co., Inc. d/b/a Olivers Bar & Grill (186), to the plaintiff the sum of \$11,789.34 on a certain book account, a true copy of which is annexed hereto as Exhibit "G." Payment has been demanded and has not been made.

3. The plaintiff sues the defendant 186 for goods sold and delivered and/or services rendered by the plaintiff to the defendant 186, upon the promise by 186 to pay the agreed amount as set forth in Exhibit "G" annexed hereto. Payment has been demanded and has not been made.

4. The plaintiff sues the defendant 186 for the reasonable value of goods sold and delivered, and/or services rendered by the plaintiff to the defendant 186 upon the promise of 186 to pay a reasonable price for the same, as set forth in Exhibit "G"

annexed hereto. Payment has been demanded and has not been made.

5. The defendant, 186, being indebted to the plaintiff in the sum of \$11,789.34 upon an account stated between them, did promise to pay to the plaintiff said sum upon demand. Payment has been demanded and has not been made.

WHEREFORE, plaintiff demands judgment against the defendant 186 West 4th St. Management Co., Inc. d/b/a Olivers Bar & Grill in the sum of \$11,789.34 plus attorney fees pursuant to the credit application or as permitted by law, plus interest and costs.

#### EIGHTH COUNT

1. Plaintiff repeats the allegations contained in the First through Seventh Counts of its Complaint as if set forth at length herein.

2. Upon information and belief, the plaintiff dealt with all of the defendant entities, Jekyll & Hyde, Inc., Deacon Brody Management Inc. d/b/a Jekyll & Hyde Greenwich Village, Bayville Entertainment Inc. d/b/a Bayville Adventure Park, Sixth Avenue Food Services Ltd., New Castle Foods Inc., Davey Jones Locker Management Inc. d/b/a Ship Wreck Tavern, and 186 West 4th St. Management Co., Inc. d/b/a Olivers Bar & Grill, and these defendant entities intermingled their assets and liabilities.

Therefore, all of the defendant entities are responsible for payment of the entire amount due and owing to the plaintiff in the total amount of \$750,746.46 plus attorney fees pursuant to the credit application or as permitted by law, plus costs.

WHEREFORE, plaintiff demands judgment against the defendants Jekyll & Hyde, Inc., Deacon Brody Management Inc. d/b/a Jekyll & Hyde Greenwich Village, Bayville Entertainment Inc. d/b/a Bayville Adventure Park, Sixth Avenue Food Services Ltd., New Castle Foods Inc., Davey Jones Locker Management Inc. d/b/a Ship Wreck Tavern, and 186 West 4th St. Management Co., Inc. d/b/a Olivers Bar & Grill in the sum of \$750,746.46, plus attorney fees pursuant to the credit application or as permitted by law, plus costs.

NINTH COUNT

1. Plaintiff repeats the allegations contained in the First through Eighth Counts of its Complaint as if set forth at length herein.

2. Upon information and belief, defendants Jekyll & Hyde Inc., Deacon Brody Management Inc. d/b/a Jekyll & Hyde Greenwich Village, Bayville Entertainment Inc. d/b/a Bayville Adventure Park, Sixth Avenue Food Services Ltd., New Castle Foods Inc., Davey Jones Locker Management Inc. d/b/a Ship Wreck Tavern, and 186 West 4th St. Management Co., Inc. d/b/a Olivers Bar & Grill

are insolvent, as defendants are unable to meet their pecuniary liabilities as they mature, by available assets or by honest use of credit, and a Receiver should be appointed to liquidate these defendants assets for the benefit of their creditors.

WHEREFORE, plaintiff demands judgment,

1. appointing a Receiver for the creditors and stockholders of the defendants Jekyll & Hyde, Inc., Deacon Brody Management Inc. d/b/a Jekyll & Hyde Greenwich Village, Bayville Entertainment Inc. d/b/a Bayville Adventure Park, Sixth Avenue Food Services Ltd., New Castle Foods Inc., Davey Jones Locker Management Inc. d/b/a Ship Wreck Tavern, and 186 West 4th St. Management Co., Inc. d/b/a Olivers Bar & Grill, and

2. For such other and further relief as this Court may deem just.

*Melissa A. Pena*

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MELISSA A. PENA (MP-3320)  
Attorney for Plaintiff

/s/ Steven Mitnick

STEVEN MITNICK  
Attorney for Plaintiff

Dated: March 20, 2008

SYSKO FOOD SERVICES OF METRO NEW YORK, LLC  
20 Theodore Conrad Drive,  
Jersey City, New Jersey 07305

-----  
TO: Jekyll & Hyde, Inc.  
91 Seventh Ave. South  
New York, NY 10014

AMOUNT DUE: \$203,042.16

EXHIBIT "A"

SYSKO FOOD SERVICES OF METRO NEW YORK, LLC  
20 Theodore Conrad Drive,  
Jersey City, New Jersey 07305

-----  
TO: Deacon Brody Management Inc.  
d/b/a Jekyll & Hyde Greenwich Village  
91 Seventh Avenue  
New York, NY 10014

AMOUNT DUE: \$ 5643.00

EXHIBIT "B"

SYSKO FOOD SERVICES OF METRO NEW YORK, LLC  
20 Theodore Conrad Drive,  
Jersey City, New Jersey 07305

-----  
TO: Bayville Entertainment Inc.  
d/b/a Bayville Adventure Park  
8 Bayville Avenue  
Bayville, NY 11709

AMOUNT DUE: \$ 1370.93

EXHIBIT "C"



SYSKO FOOD SERVICES OF METRO NEW YORK, LLC  
20 Theodore Conrad Drive,  
Jersey City, New Jersey 07305

-----  
TO: Sixth Avenue Food Services Ltd.  
1409 Sixth Avenue  
New York, NY 10019

AMOUNT DUE: \$452,078.76

EXHIBIT "D"

SYSKO FOOD SERVICES OF METRO NEW YORK, LLC  
20 Theodore Conrad Drive,  
Jersey City, New Jersey 07305

-----  
TO: New Castle Foods Inc.  
91 Seventh Avenue  
New York, NY 10011

AMOUNT DUE:

\$ 50,189.60

EXHIBIT "E"

SYSKO FOOD SERVICES OF METRO NEW YORK, LLC  
20 Theodore Conrad Drive,  
Jersey City, New Jersey 07305

-----  
TO: Davey Jones Locker Management Inc.  
d/b/a Ship Wreck Tavern  
10 Bayville Avenue  
Bayville, NY 11709

AMOUNT DUE: \$ 26,632.37

EXHIBIT "F"

SYSKO FOOD SERVICES OF METRO NEW YORK, LLC  
20 Theodore Conrad Drive,  
Jersey City, New Jersey 07305

-----  
TO: 186 West 4th St. Management Co., Inc.  
d/b/a Olivers Bar & Grill  
190 West Fourth Street  
New York, NY 10014

AMOUNT DUE: \$ 11,789.34

EXHIBIT "G"

EXHIBIT "H"



# SYSCO FOOD SERVICES - ALBANY

A DIVISION OF SYSCO CORPORATION  
P.O. Box 5327 • Albany, New York Phone (518) 459-3200

NEW  
CUSTOMER  
FORM

770379

CUST. NO. > SALESMAN NO. > (56) DATE > 3-22-92

TRADE NAME (D/B/A): > Jacky + Hyde YRS. IN BUSINESS > 1  
IN THIS LOCATION

CORPORATE NAME: > Jacky + Hyde Inc.

DELIVERY ADDRESS: > 91 7th Ave South  
212-989-7201 (STREET) NY (CITY) 10014 (ZIP)  
Manhattan (COUNTY)

PHONE: > (AREA CODE) > (NUMBER) >

PERSON IN CHARGE: > Sharon Finley

BILL TO ADDRESS: > SAME (STREET)



PROPRIETORSHIP ☐ PARTNERSHIP ☐ CORPORATION ☒ UNDER STATE OF NY

OWNER: > D.K. Finley 212-929-4082 (Phone)

PARTNER: >

CORP. OFFICERS: >

PREVIOUS EXPERIENCE: > Rest. Business

HAVE YOU EVER BEEN BANKRUPT? > No

OWN: YES ☐ NO ☒ RENT: > 9000.00 LEASE: ☐ CONCESSION: ☐ OTHER: ☐

IF RENT/LEASE: > (NAME OF PROPERTY OWNER) > (ADDRESS) > (PHONE) >

TRADE REFERENCE: NOT TO INCLUDE BEER/LIQUOR DISTRIBUTORS

MEAT SUPPLIER: > Kushy 303 W 11 212-243-4629

GROCERY SUPPLIER: > Ampro Bank 212-542-4611

EQUIP. SUPPLIER: > Paragon Bowery 212-226-6963

LINEN SUPPLIER: > Amato Linen Perseverant NY 516-378-9400

CHECKING ACCOUNT NO. > 013004253 BANK: > Chemical S.S.N. > 155-36-4835 PHONE: > 204 W 424

LOAN ACCT. NO. > MORTGAGE ACCT. NO. > BANK: > S.S.N. > PHONE: >

PLEASE ATTACH OR SEND TAX EXEMPTION FORM

CUST. CATEGORY > Rest TAX EXEMPTION NO. >

PROJECTED SALES VOLUME > \$ 1 1/2 M SEATING CAPACITY: > 90

EMPLOYEES: > 20 PARTTILLS YES ☐ NO ☒ SUBSTITUTES YES ☐ NO ☒

EARLIEST DELIVERY TIME: > 11:00 LATEST DELIVERY TIME: > 3:00

NEAREST ACCOUNT BEFORE: > AFTER: >

DELIVERY DAYS REQUIRED: > MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY

BID: YES ☐ NO ☒ ZONE: > 1 OTHER: >

TERMS REQUESTED: > C.O.D. > C.O.D. OPTIONAL WEEKLY VOUCHER

The undersigned agrees to notify SYSCO CORPORATION by certified mail of any change of ownership of the Customer and to agree to be liable for all purchases should the undersigned fail to comply with said credit terms. In the event that a guaranty is executed by more than one person, then, in such event, the liabilities and obligations of the undersigned hereafter shall be joint and several and the relative words here in shall be read as "or" in the plural.

SIGNATURE OF CUSTOMER REP. >

SALES REP. >

8/81

The undersigned request SYSCO Corporation and any of its subsidiaries (herein "SYSCO") to sell, deliver and service the customer as stated in the application on the reverse side hereof, and further certify that the statements made on the customer application are true, correct, and complete in all material respects, and customer and the undersigned authorize SYSCO to investigate all references furnished pertaining to credit, including obtaining credit reports on the customer and the undersigned from outside credit agencies.

In the event that there is a delinquency in payment, the undersigned agree that a service charge of 1 1/2% per month will be imposed on the balance due, and in the event of a default in payment, that the customer will pay to SYSCO all collection costs and an attorney's fee of one-third of the amount due. The customer and the undersigned consent to jurisdiction in the New York Supreme Court regarding any claim arising hereunder.

The undersigned personally guarantee payment in full of all indebtedness of the customer to SYSCO now existing or hereinafter incurred including any and all services charges, collection costs and attorney's fees incurred as specified above, and waive any presentment, demand, protest, and any other notice from SYSCO regarding this guarantee of payment. This guarantee will cover all sales whether or not the terms requested are COD. The use of corporate titles shall not limit the personal liability of the signatory.

WITNESS

DATED

3. 24. 92

X

X

#### CUSTOMER CATEGORIES

Commercial Fast Food Chains  
 Commercial/Full Service Restaurant  
 Commercial/Limited Menus  
 Special Market/Retreats, Seminars,  
 Military, Correctional Instit.  
 Community Centers, Camps -  
 Super Market/Private Clubs,  
 Country Clubs  
 Super Market/Independent  
 Retail Market/Deli, Drug Stores, etc.  
 Leisure/Drive-In, Bowling, Dairy Bar,  
 Race Tracks, Ski Area  
 Business Industry/In Plant Feeding,  
 Mobile Caterers, Vending Oper.

Educational Market/Schools, Colleges,  
 Fraternities, Sororities  
 Convenience Market/Chain  
 Convenience Market/Independent  
 Transportation Market/Air Terminal  
 Facilities, Highways, Passenger Lines  
 Hotel/Motel  
 Health Care/Hospitals, Sanatoriums  
 Nursing Homes  
 Bakeries  
 Home & Pop Market/Retail  
 Sub Distributors  
 Miscellaneous/Intercompany Sales,  
 Office Sales, Samples

Case Number:

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

---

**SYSCO FOOD SERVICES OF METRO  
NEW YORK, LLC**

**Plaintiff,**

**v.**

**JEKYLL & HYDE, INC.; DEACON BRODY  
MANAGEMENT INC. d/b/a JEKYLL  
&HYDE GREENWICH VILLAGE and DONALD  
R. FINLEY; BAYVILLE ENTERTAINMENT INC.  
d/b/a BAYVILLE ADVENTURE PARK;  
SIXTH AVENUE FOOD SERVICES LTD.;  
NEW CASTLE FOODS INC.; DAVEY  
JONES LOCKER MANAGEMENT, INC.  
d/b/a SHIP WRECK TAVERN;  
and 186 WEST 4TH ST. MANAGEMENT  
CO. INC. d/b/a OLIVERS BAR &  
GRILL,**

**Defendants**

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**COMPLAINT**

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**NORRIS MCLAUGHLIN & MARCUS, PA**

*Attorneys for Plaintiff*

**875 Third Avenue**

**New York, New York 10022**

**212-808-0700**